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Florian Witte

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INTRODUCTION TO THE EU DIRECTIVE ON DUE DILIGENCE AND ITS RELATIONSHIP TO COMPETITIVENESS

Florian Witte, Ph.D, Attorney at Law, UK

Abstract: The present paper aims to introduce into the Union's competitiveness policy a reassessment of the rules governing the relationship between business and human rights, with a view to simplification. The principle of due diligence, through various approaches by the European legislator, highlights and analyzes the final sentence of the amendments proposed by Directive (EU) 2024/2464 on sustainability reporting. Our introduction is based primarily on the main characteristics of due diligence, as well as on the European Commission's proposal, which laid the foundation for further amendments. It would be useful

to assess whether the Directive complies with the European Commission's initial proposal and whether it constitutes an effective tool for guiding businesses toward responsible conduct that reduces the risk of violations of fundamental rights, thus promoting competitive conditions throughout the market. The Directive lays the foundation for a gradual, harmonized approach that produces significant extraterritorial effects, in keeping with the spirit of the Brussels effect.

Keywords: due diligence; right to competitiveness; European Union law; Directive (EU) 2024/2464; CSDDD.

INTRODUCTION

In recent years, especially between 2019 and 2024, the EU has followed new paths with objectives focused on climate impact as set out in Regulation (EU) 2021/1119, as well as the UN Sustainable Development Goals by 2030. These are important steps focused on the European Commission's communication for the European Green Deal (COM (2019)

640 final) of 2019, as well as on the achievement of a Union strategy aimed at transforming the Union into a just society with a modern, resource-efficient and competitive economy.

The European Commission has supported the sustainable transformation that has distinguished the competitiveness sector as an essential approach to pursuing sustainability objectives. The European Commission, consciously and with difficulty deriving from the burdens of its own policy, has forced companies to indicate the overall and compromised competitiveness of the Union.

The Union's has failure to keep pace with the economy and the need for further investments led to the completion of the Green Deal of 29 January 2025. For this reason, the European Commission has presented programs and projects based on competitiveness for the EU, developed as action plans.[1]

The European Commission's related program aspired to

[1]A Competitiveness Compass for the EU, according to the Report of Mario Draghi: The future of European competitiveness-(part A-part B) of September 2024: https://commission.europa.eu/topics/eu-competitiveness/competitiveness-compass_en Accessed on 03.09.2025.

invented technologies and services marketed while maintaining the objective of zero climate impact. The compass defines the related measures to be adopted to stimulate competitiveness in areas of intervention that were identified with the objectives of innovation, security, and decarbonization.

The European Commission has formulated actions that are close to a policy of interventions aimed at reducing administrative burdens and simplifying legislation in favor of businesses, such as those that create a barrier to long-term investments.[2] The regulation identified after the Draghi report as a real obstacle to European economic progress and the Council[3] have given rise to a type of simplification revolution based on the spirit of the Budapest Declaration, a new pact for competitiveness from November 2024.

[2]Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Competitiveness Compass, COM (2025) 30 final, p. 17).

[3]Staff Working Document Accompanying the documents COM (2025) 80final-COM (2025) 81final; Call for evidence on the rationalisation of reporting requirements).

The simplification procedure for the European Commission from February 2025 has highlighted a package of proposed amendments to legislative acts entitled Omnibus I. It aimed at simplifying rules relating to the relationship between business and human rights, whose development was preceded by a consultation phase, such as with stakeholders (Pantazi, 2024). It seems interesting that the related disciplines, with sustainable reporting for due diligence and businesses, put the legislative adoption process on a difficult path.

The aim of reducing administrative burdens for businesses by up to 25% and a total of 35% for small and medium-sized enterprises, while achieving annual savings of up to 6 billion euros in administrative costs, is an open challenge.

The relevant directive introduced a binding global framework for the respect of human rights and environmental protection by certain European and non-European companies, as well as the business chains they participate in. This establishes a mandatory climate change compliance policy that ensures the compatibility of corporate strategies and the transition to a European, international, and sustainable economy, aiming to address

global warming of up to 1.5°C.

WHAT CHANGES DID THE SUSTAINABILITY REPORTING DIRECTIVE BRING?

The related Omnibus I package included two proposals for directives based on the Directive (COM(2025) 80 final and COM(2025) 81 final), as well as the proposal to simplify and strengthen the Carbon Border Adjustment Mechanism (COM(2025) 87 final). These proposals address the regulatory framework of Directive (EU) 2022/2464 on sustainability reporting, as well as Directive (EU) 2024/1760 on corporate due diligence (CSDDD).

Among the innovations introduced with this step, the innovation gap is noteworthy. The European Commission has laid the foundations for freeing up competitive space within the context of an internal market, which thus, through startups, removes and builds adequate financial instruments for bank loans, data networks, and a new generation of energy that invests in technological innovation through artificial intelligence and biotechnology. Technological innovation is certainly a

completely new development, aiming to maintain its Green Deal plans and shift its focus away from significant energy resources toward next-generation grids that give rise to a clean industrial deal through the rules of a single market regarding state aid. In this spirit, the step towards a sustainable mobility policy is introduced, which concerns transport and ports and does not include the foundations of a policy that has taken into account Regulation 1306/2024.

Intervening to defend a single European market as a goal in the face of foreign actions promotes multinational companies and penalizes the European ones that establish excess non-market production capacity that harms the market. It is within this spirit that the European Commission has proposed and defined new tools for the defense of competitiveness for European companies that go beyond the regulation of golden power (2019/452), dumping and subsidies (2016/1036 and 2016/1037), which in reality use tools for an internal market relating to procurement and concessions as well as those of competition through state aid.

Sustainability reporting, as a complementary tool and subject of significant amendments, deserves further

attention. Since 5 January 2023, the CSRD has imposed transparency obligations on companies. The impact of their activities in the sustainability sector, as a comprehension of environmental, social, and human rights and governance factors is pursuant to Article 2, paragraph 17. As a tool for companies, reporting on their management report, corporate strategies, established objectives, policies, sustainability risks, and the bodies responsible for this area is required.

The company must disclose the diligence procedures implemented for potential and actual negative impacts related to the company's activities and the actions taken as evidence of remediation. These decisions are informed for investors, enabling citizens to understand the companies' commitment to sustainability in accordance with Directive 2022/2464.

The communication took into account the European Sustainability Reporting Principles (ESRS). The European Commission adopted delegated acts for those operating in their sectors, such as Regulation (EU) 2023/2772 of the European Commission of 31 July 2023, which integrated Directive 2013/734/EU of the European Parliament and the

Council, which covered the sustainability reporting principles (Bertram, 2025). The directive's transposition deadline established reporting obligations that were applied gradually to the characteristics and size of companies, starting with large companies and then extending to listed SMEs. Large companies and public-interest entities with more than 500 employees belonged to the first group according to Article 5. They communicated the relevant information for the reporting obligations drawn up according to Article 5. 1 of the 2024 financial year.

The proposed amendments under Omnibus Package I include: reducing the number of companies subject to reporting obligations, the time frame for their application to companies, and the content of the information submitted. The European Commission has limited the number of companies subject to binding reporting obligations, which amounts to up to 80%, including companies with more than 1,000 employees.

According to the directive, companies fall within the first phase of approval of the proposal and are exempt in the future. This threshold allows for the alignment of

companies subject to the due diligence directive. The proposal postpones reporting obligations for two years after entry into force, thus avoiding companies in the second and third groups that maintain information for their own financial year and are subsequently exempted. The objectives for simplification and reduction of burdens for businesses as well as the proposal to limit the amount of information that businesses transmit in the event of the adoption of delegated acts concern sector-specific reporting principles and introduce the review of a series of ESPRs by the European Commission (Pires, 2024).

The Directive has introduced broad relativity within the scope of its subjective application, directly through a cascade mechanism involving the relative responsibility of small and medium-sized enterprises that perform due diligence. Thus, the creation of a common standard of due diligence with regard to human rights and environmental regulations has positive consequences in terms of harmonization and regulation of competitive conditions in their markets.

DUE DILIGENCE FOR COMPANIES ACCORDING TO THE DIRECTIVE

Legislative action by the Union on business and human rights since June 2024 has highlighted Directive (EU) 2024/1760 on due diligence for companies and sustainability objectives. The approval process is straightforward and formulates the European Commission's proposal of 2022 (COM (2022) 71 final), as well as the European Parliament's resolution of 2021 (2021/C 474/02).

This resolution is based on the UN principles on business and human rights, as well as the OECD guidelines for multinational enterprises and the Directive, which requires recipient companies to comply with due diligence in the area of human rights and the environment according to the objectives and subsidiaries of business partners in the business chain, pursuant to Article 3 of the Directive.

For companies involved and integrated into the policies, risk management and risk management systems establish due diligence as necessary to identify, assess, prevent, and prioritize potential and actual negative impacts on the environment and human rights associated with their activities, and conduct audits to ensure their remediation.

A complaints procedure is thus established, as are benefits for those affected by the policy's effectiveness through periodic assessments, as well as the annual reporting requirement for companies and the matters regulated by their directive.

SUBJECTIVE AND OBJECTIVE PROFILE AND EXTENT OF DUE DILIGENCE OBLIGATIONS

Due diligence policies for companies operating in the market decisively meet size requirements, such as a number of employees and turnover. The Directive thus applies to European and non-European companies that comply with the regulations of one Member State and a third country. According to the objective profile, companies subject to the Directive monitor due diligence and the value chain, as well as direct and indirect upstream business partners, with limitations. Partners falling within the scope of the Directive monitor commercial relationships with companies operating in the European market, thus adapting their policies to a collaborative approach.

The same also applies to small and medium-sized enterprises (SMEs), which directly comply with the Directive for reasons of size, which constrains, promotes, and safeguards human rights and the environment, as does the role of business partner for the leading company.[4]

The directive's broad application represents a major aspect. The legislator seeks to extend European sustainability standards in the environmental and human rights sectors beyond national borders, both directly and indirectly, requiring companies operating in the internal market to comply with these requirements.

This aspect is worthy of introduction to corporate civil liability under Article 29. The company has failed to comply with its obligations to prevent negative impacts within its operations, which hold a natural or legal person liable for the damage caused, and for compensation for the resulting damages.

Subsidiaries of direct and indirect business partners are liable for any violations they commit directly, according to Article 29, paragraph 1, letter 2) of the directive. This provision thus fosters the following benefits: competition

[4]COM (2025) 81 final, Explanatory Memorandum, p. 13.

between companies that impose and bear the costs of the damage caused, and the practice of fictitious, formal transfers to third countries that offer fewer guarantees for victims. This end promotes a widespread diffusion of European protection standards.

DUE DILIGENCE FOR BUSINESS PARTNERS AND CIVIL LIABILITY

The opinions gathered from stakeholders and the shared needs for amendments by the European Commission identify the need for a transposition deadline of 26 July 2026 and the application of due diligence obligations for companies. This outlines the directive, which envisages gradual implementation on an annual basis according to the characteristics of the companies involved, starting from 26 July 2027. The proposal and deadlines are deferred for each year.

The need for postponement allows interested companies to comply with the time frame necessary to bring their systems into line. This facilitates their adaptation, and the European Commission has anticipated the relevant

deadlines for issuing the guidelines. These guidelines are addressed to and provide assistance to companies and Member State authorities in defining practical methods for fulfilling due diligence obligations.

These guidelines are available from 26 July 2026. Companies will be able to implement these guidelines for two years, and their systems will comply with the European Commission's guidelines. Through its proposal (COM (2025) 81 final), the European Commission has substantially amended the legislative text to determine a change in the structure of the directive.

This approach concerns the implementation of due diligence measures for direct business partners, such as a company that has entered into a commercial agreement and indirectly carries out related commercial activities.

The current version of the directive establishes the target company for activities that connect the business chains and the direct and indirect business partners, with the aim of identifying the general areas for an assessment of negative impacts and their severity. According to Article 8, the results are obtained and the company conducts an assessment of its business, subsidiaries, and business

partners in the sector identified as most likely to have such impacts.

The proposed directive extends its obligation, limiting the assessment of direct business partners and its exceptions. The European legislator, by majority vote, provides for the negative impacts on the environment and human rights that remote companies may inspect along their business chains.[5] Through the initial production phase for raw materials, upstream and transport partners verify the relevant human rights violations.

The relevant assessment for indirect partners occurs in two scenarios. The lead company has available plausible information and actual verification of the potential negative impact and indirect nature of the relationship with the partner, resulting from an artificial construction that assumes the controls required for direct partners. Under these circumstances, the company conducts a thorough assessment.

The legislator specifies the information of the indirect partner, plausible to the relevant company that has knowledge of credible reports from non-governmental

[5]COM (2025) 81 final, Explanatory Memorandum, p. 13.

organizations regarding harmful activities, and of indirect supplier when it is aware of paid incidents involving suppliers through business contacts familiar with the problems of a specific location and a conflict zone.[6] From a compensation perspective, the legislator establishes an outlined structure that requires the lead company to commit to a code of conduct requiring contractual guarantees, and the direct partner thus equalizes the conditions of its commercial partners.[7]

The difficulties of understanding and the notion of plausible information require a direct approach to limiting the protection of human rights that enhance the value chains responsible for due diligence, which thus calls for a greater, more direct effort to investigate regulatory circumventions.

This is a remarkable system, developed according to the UN principles, aimed at extending the control of a value chain that focuses on the responsibility of direct suppliers who are distant from the business chain and only in the case of available information of the presence of a negative impact.

[6]COM (2025) 81final, Explanatory Memorandum, cit., p. 18.

[7]Art. 8, par. 2 bis, of proposal COM (2025) 81final.

The relevant reference to relationships with business partners, as well as the inability to halt and minimize the extent of the actual negative impacts caused by the directive, requires the leading company to refrain from start-up. This is a serious harm, the further and definitive remedy of which is suspension of the relevant business relationship, pursuant to recital no. 57, art. 10, paragraph 6, letter b) of Directive (EU) 2024/1760.
The purpose of a relationship, termination as a last resort, has no other scope but remains exclusively within the scope of the company addressed by the directive's right to suspend the relationship and the due diligence measures adopted to halt and render them ineffective according to the consequences that arise from the suspension, which would seriously impact the same, pursuant to Article 10, paragraph 6 of the proposal.
Another element concerns the elimination of a common regime related to extraterritorial civil liability provided for by the Directive. The legislator has introduced conditions that establish civil liability for environmental and human rights damage caused by violations of due diligence rules on the part of companies pursuant to Article 29. The right

to compensation of the responsible company, as a provision of national law, requires compliance with due diligence obligations. This amendment responds to requests by leaving the regulation of specific liability conditions in terms of causality and fault to national legislation.

Regarding the right of victims, which is addressed to non-governmental organizations, it provides for and initiates legal proceedings to assert their rights arising from the injury suffered pursuant to Article 29, paragraph 3, letter d) of Directive (EU) 2024/1760. This removal reduces the burden on businesses. Legal actions reduce the fragmentation of cases involving victims of individual businesses, thus simplifying matters.

The provision establishes the nature of an implementing rule for the provisions of national law implementing the liability regime outlined above, while the application of the law of a non-European state is abolished. It is thus a provision that addresses a specific aspect of private international law pursuant to Article 29, paragraph 7.

Other amendments included in the proposal reduce the minimum frequency to five years for the adequate and effective assessment of due diligence measures and the

entire value chain on the part of the company and the modalities for imposing public financial penalties for violations of rules that empower the Commission to develop guidelines in the area of penalties, thus eliminating the maximum amount of the sum and limiting the dialogue to the relevant stakeholders pursuant to Article 13.

DUE DILIGENCE OBLIGATIONS AND THE CLASSIFICATION OF THEIR NEGATIVE IMPACTS

The Directive has introduced amendments regarding due diligence obligations. Within this framework, the same structure of the proposal has been maintained, along with the introduction of positive changes.

The CSDDD has imposed due diligence requirements as exercised by its companies and the multi-phase risk-based procedures that are demonstrated through the relevant articles of the Directive: - integration of due diligence requirements as well as policies for management systems and risks for companies pursuant to Article 7.

The identification and assessment of potential and actual negative impacts prioritizes them. Preventing and mitigating impacts on the relevant entities, as well as

remediating negative impacts and conducting a broad dialogue relevant to stakeholders, is an important factor. Establishing and maintaining a notification mechanism for a complaints procedure and effectively monitoring the procedures of the policies adopted as well as communicating the actions taken are some of the developments in this regard.

The Directive established and required the adoption of appropriate measures that enabled due diligence objectives, thus effectively addressing adverse impacts in a manner commensurate with the severity of the impacts available to the company, also considering the circumstances of a specific case, including the nature and extent of the impacts and the relevant factors.

This clarification enables and confirms due diligence procedures that go beyond a risk-based approach, which constitutes an obligation to achieve no-result measures. This approach reflects the liability regime for companies that ensure and address adverse impacts on human rights within the environment, verifying that they have implemented the appropriate measures, according to the circumstances, in a precise and appropriate way, thus

preventing their impact.
The amendments highlight practical guidance for companies' application and for establishing the Directive as a global reference standard. Thus, support for the introduction of a general obligation to remediate adverse impacts caused by companies, including the subjective scope of application, is welcomed. It is an obligation that voluntarily repairs a business partner's negative impact.
The structure of positive due diligence procedures refers to a requirement that includes measures for exercising due diligence.
Companies are required to provide their stakeholders with relevant, complete information in a transparent and effective manner, in compliance with the adopted procedures. This ensures a supervisory power of assessment for stakeholders and the policies relating to the various corporate entities. It seems reasonable that the guaranteed protection of interests involves the determinations made by a body that qualifies a negative impact on human rights and the environment, which is based on due diligence obligations to avoid such an impact.
The relevant definition is included in Article 3, paragraphs

b, c, and f) of the CSDDD, which actually seeks to qualify the negative impacts on human rights caused by the abuse of rights listed in Annex I, Part 1. Environmental protection thus includes violations of the rights, prohibitions and obligations which are also listed in Annex I, Part I, Section 1, paragraphs 15 and 16 and Part II.

Regarding human rights, the list of abuses encompasses specific general provisions, namely the protection of workers' and minors' rights. The Directive thus refers to cases protecting the rights of minorities and indigenous communities. We are talking about human rights and international conventions.

In the field of human rights, the relevant conditions are those that consider the circumstances of specific cases and the chain of economic activity within the operational and geographical context.

The existence of a negative impact is formulated, which influences the assessment of reasonableness due to the risk of harm based on specific consequences of evidentiary terms that comply with the determination of non-compliance. According to the final text of the Directive, Section II lacks reference to international instrumental

foundations that, according to the international protection of human rights, are part of multinational corporations.
The prohibitions and obligations included in the environmental convention address and verify conduct within the scope of business activities, which are expanded and comply with those established by the proposal itself.
The purpose of the directive concerns the material scope of application, which appears crucial and restrictive in mitigating negative impacts by providing a comprehensive list of rights and the companies they commit to respecting.
The diversity that respects the approach adopted by the guiding principles refers to a set of internationally recognized human rights that state actors respect.
A genuine perspective is one that values societies and the benefits of certainty and scope for a responsibility that ensures the protection of the rights that are called upon and guaranteed by the formulas of a referral to various international human rights and environmental protection instruments.
This is a choice that highlights the limitations of a list that narrows down the potential violations and precisely justifies the protection of human rights that fall within the

scope of their material application.

CONCLUSIONS

The ongoing economic and trade tensions, particularly those related to non-European jurisdictions and to sustainability and human rights protection, pave the way for a shift in the Union's progress toward a social and ecological transition.

The Omnibus I package, through various concerns, creates uncertainty for businesses regarding the proposed changes to reporting, thus considering the company's ownership as an adequate path to its own structures and the European roadmap, which is at a standstill.

The approval of the deferral of the entry into force of the imminent reporting and due diligence obligations is concentrated in the approval of Directive (EU) 2025/794 of the Council of 14 April 2025, which has remained in jargon as “Stop the clock.” It regulates the postponement of the application of the two previous directives.

The new directive has taken into account the limits of the relationships with direct partners, removing the civil liability deterrent that does not alter the structure that maintains a revised form of the strategic objectives being pursued. It remains to follow the interest in an approval process for a proposal that investigates the investigation and the institutions that are able to achieve competitiveness and sustainability within the scope of the Union.

The related limitations within the subjective scope, both directly and indirectly, of the CSDDD and a varied classification for negative and significant impacts highlight the reasons for compliance with the discipline that evaluates and requires the final text to achieve the objectives of the European Commission itself within a regulatory framework that places private actors' responsibilities on a transition path, that is, towards a sustainable economy in line with the European Green Deal. This is an affirmative response perspective that exclusively takes into account several interconnected elements.

The CSDDD represents an international instrument that coordinates business, cross-cutting obligations, human rights, and the environment. This avoids excesses and competitiveness issues. Union institutions prefer the path of integration and harmonization, which ensures greater sensitivity to the stakeholders involved.

This same approach is followed within the European context by sustainability reporting, namely by further extending the application of obligations to private individuals. The CSDDD thus establishes the relevant duties that apply to large companies, including non-European ones, that operate the company.

Third countries must comply with due diligence procedures in maintaining their relationships with internal market operators. The directive establishes its own standards not only at the European but at global level for companies, thus influencing regulatory changes at the international level in various internal jurisdictions and in accordance with the spirit of the Brussels effect.

According to the criticality criteria, the CSDDD directive thus represents a content that goes beyond the effective protection of individuals and the community; it involves

the activities of businesses and the level playing field for the market, which is capable of risking negative impacts on health and rights, as well as the economic benefits obtained through their violation.

REFERENCES

Bertram, A. (20 March 2025). How the EU Omnibus Package :Roll Back the Green Deal. *Verfassungsblog:* https://verfassungsblog.de/eu-omnibus-csrd/ Accessed on 03.09.2025.

Bueno, N., Bernaz, N., Holly, G., Martin-Ortega, O. (2024). The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise. *Business and Human Rights Journal, 9 (2),* 2ss.

Ciacchi, S. (2024). Thenewly-adopted Corporate Sustainability Due Diligence Directive: an overview of the lawmaking process and analysis of the final text. *ERA Forum, 25 (3-4),* 31ss.

De Kluiver, H. (2023). Towards a Framework for Effective Regulatory Supervision of Sustainability Governance in Accordance with the EU CSDD Directive. A Comparative Study. *European Company and Financial Law Review, 20 (1),* 204ss.

Habersack, F., Zickgraf, P. (2023). Sorgfaltspflichten und Haftung in der Lieferkette als Regelungsmodell. *The Rabel Journal of Comparative and International Private Law, 87,* 534ss.

Pantazi, T. (2024). The Introduction of Mandatory

Corporate Sustainability Reporting in the EU and the Question of Enforcement. *European Business Organization Law Review, 25,* 514ss

Pires, C. (2024). The Impact of the Ongoing European Legislative Process regarding Corporate Sustainability Due Diligence on Contracts between Companies and their Partners. *Zeitschrift für das Privatrechtder Europäischen Union, 21 (1)*, 48ss.